IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8279 OF 2005

S.S. Pradhan .. Petitioner

Vs.

Prabhadevi Himgiri Co-op. Housing Scoy. Ltd. and ors. .. Respondents

Mr. Rajendra Pai with Mr. Prashant Naik with Mr. Sanjeev P. Kadam for petitioner.

Mr. S.M. Railkar for respondent no.1.

Mr. A.H. Palekar, AGP for respondent nos.2 to 4.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2006.

P.C.:

1. This petition impugns the order passed by the State Government informing the petitioner that the second revision under Section 154 of the Maharashtra Co-opertive Societies Act, 1960 is not maintainable in view of the law laid down by this court in the case of Virendra Bhanji Rathod vs. Anand Vihar Co-op. Hsg.Soc. Ltd., Mumbai [2004 (1) Mah. L.J. 656].

2. The second revision before the State

Government was filed by the petitioner challenging the recovery certificate issued under Section 101 of the said Act on 19/12/2001 by the Deputy Registrar, Co-operative Societies, P.S. Division, Mumbai. The amount under recovery was Rs.18,000/- as principal arrears, Rs.8040/- as interest and Rs.760/- as the cost, thus making a total of Rs.26,800/-. This recovery certificate was challenged by way of a revision application under Section 154 of the Act and the said revision application registered as Revision Application No.555 of 2003 came to be disposed off by modifying the recovery certificate dated 19/12/2002. By the said order the petitioner was directed to pay the amount of Rs.18000/- plus interest thereon as per the provisions of bye-laws from the date mentioned in the impugned order.

3. The learned counsel for the petitioner urged that in view of the law laid down in the case of Ishwar Singh vs. State of Rajasthan and ors. **[(2005) 2 SCC 334]**, the second revision application under Section 154 of the Act was maintainable and the view taken by this court consistently required reconsideration. The learned counsel, therefore,

urged to make a reference to a Division Bench in support of his contentions that the second revision application under Section 154 of the Act can be entertained by the State Government against the first revision being rejected by the Registrar, Additional or Joint Registrar.

4. This court (Single Bench) in the case of Videocon Appliances Ltd. vs. Maker Chamber V Premises Co-op. Socy. Ltd. and ors. **[2006(1) ALL MR 97]** referred to the decision of the Supreme Court in the case of Ishwar Singh (Supra) and held that the said decision dealt with the provisions of Section 128 of the Rajasthan Cooperative Societies Act, 1965 and it could not be made applicable to the scheme of Section 154 of the Act i.e. the Maharashtra Co-operative Societies Act, 1960. This court, inter alia, drew the distinction in the following words:

> "... Firstly, in my opinion the said judgment has no application because the provisions of Section 128 of the Rajasthan Co-operative Societies Act, 1965 is in pari materia

different to the provisions of the present case. The power under Section 128 is simultaneously conferred on the Government and the Registrar because the opening words of the provisions of Section 128 reads as under:-

> "The State Government and the Registrar may call for and examine the record of any enquiry or proceedings of any other matter."

In contrast to the same, the provisions of section 154 do not give a concurrent jurisdiction to the Registrar and the State Government because the words prescribed thereunder are "the State Government or the Registrar may call for and examine the records". The wording in that section by substitution of the word "or" in place of "and" is materially significant because in case where the word "and" is used is a conjoint power conferred both on the Registrar as well as the Government whereas the word "or" indicates that it is the power conferred

> on 'either' or 'or'; in such cases the power cannot be exercised by both but it can be exercised by one of the two and in that view of the matter, I am not inclined to accept the contention that by virtue of the judgment of the Apex Court in the case of Ishwar Singh vs. State of Rajasthan and ors. (supra) all the learned Single Judge's judgments of this Court interpreting the very section 154 are deemed to be impliedly overruled...."

5. In fact, the view taken by this court in Videocon's case (supra) is reinforced by the provisions of Section 154(2) of the Act which read as under:-

> 154. Revisionary powers of State Government and Registrar.- (1) .....
>
> (2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other

officer.

. This word "any other officer" would include in the State of Maharashtra, the Co-operative Officer, the Assistant Registrar and the Deputy Registrar or the District Deputy Registrar. Thus the scheme of Section 154 of the Act shows that if the order, either in the original proceedings or in the appellate proceedings, is passed by the Registrar, the Additional Registrar or a Joint Registrar, the revision would lie to the State Government, but if the order is passed by any subordinate officers like the Assistant Registrar, the Deputy Registrar or the District Deputy Registrar, the revision lies to the Registrar which includes the Additional Registrar as well as the Joint Registrar or the Divisional Joint Registrar. If the appeals are decided under Section 152(1)(b) of the Act, certainly a revision would lie under Section 154 to the State Government but it cannot be said that Section 154 of the Act contemplates the second revision to the State Government against the order passed by the Registrar, the Additional Registrar or the Divisional Joint Registrar, in a revision proceedings which can be

filed only under Section 154. There is no choice available in as much as simultaneously the jurisdiction is not vested in the scheme of Section 154 of the Act and thus distinct from the scheme of Section 128 of the Rajasthan Co-operative Societies Act, 1965.

6. I am, therefore, satisfied that the request made for reference to a larger bench is unsustainable and the law laid down by the Apex Court in the case of Ishwar Singh is not applicable to the scheme of Section 154 of the Act.

7. Coming to the point of challenge to the recovery certificate passed by the Deputy Registrar, on merits, it is required to be noted that the respondent-society has in all 19 members and the petitioner is one of them. In its Special General Body meeting held on 24/9/1997 it was resolved to carry out the repairs to the external structures of the buildings at an estimated cost of Rs.14 lacs. However, the estimated cost went upto Rs.22 lacs and, therefore, it was resolved to collect Rs.1 lac from each member so that the total expenditure could be

limited to Rs.19 lacs. The General Body meetings were subsequently called on 31//3/1998, 31/5/1998 and 31/7/1998. The repairs were undertaken by inviting tenders and duly approved by the Managing Committee of which the petitioner himself was a member. After repairs were carried out a Special General Body Meeting was held on 26/3/1999, in which it was resolved to collect Rs.18,000/- from each member additionally and every member paid the same additional amount as well. The petitioner by his letter dated 5/4/1999 sent a post dated cheque for Rs.18,000/- but imposed conditions to be complied with by the society and in default therein instructions were given to the bank not to encash the cheque. The society claimed that the cheque was returned to the petitioner and inspite of several reminders he refused to pay the amount mainly on the ground that there were leakages to the walls of his flat. The society in reply stated that the repairs to the external structures were undertaken by it and internal repairs of the individual flat were not contemplated in the contract awarded. Even by way of abundant precaution the society also called upon some experts to visit the petitioner’s flat and M/s. G.S. Apte & Co.

submitted a report stating that the leakages complained by the petitioner could not be attributed to the external repairs carried out. In fact, the petitioner by his letter dated 5/7/1998 had himself stated that external repairs to his flat were fully undertaken by the society. In view of the petitioner's persistent denial to pay the amount of Rs.18,000/-, the society approached the Deputy Registrar by filing application for recovery certificate and the same came to be allowed.

8. The revisional authority i.e. the Divisional Joint Registrar in his order dated 3/6/2005 has considered the challenge to the recovery certificate and held that the certificate as such did not suffer from any illegality but there was a modification required to be made so that the petitioner is not required to pay the cost or the expenses required for the recovery proceedings. This view taken by the Divisional Joint Registrar cannot be faulted with and more so when the recovery sought for was in terms of the resolution passed by the General Body meeting from time to time. In fact, the petitioner himself had offered to pay the additional amount of Rs.18,000/-,

along with other members.

9. Thus, there is no reason to interfere with the recovery certificate modified by the Divisional Joint Registrar, Co-operative Societies, under the supervisory powers of this court under Article 227 of the Constitution.

10. The petition is rejected summarily.

(B.H. Marlapalle,J.)